DOCUMENT RESUME

ED 249 312 UD 023 812

| | |
|---|---|
| AUTHOR | Schroyer-Portillo, Janet |
| TITLE | Civil Rights in Crisis: The Reagan Administration's Reforms. |
| INSTITUTION | National Council of La Raza, Washington, D.C. |
| PUB DATE | 20 Jul 84 |
| NOTE | 44p. |
| PUB TYPE | Reports - Research/Technical (143) |
| EDRS PRICE | MF01/PC02 Plus Postage. |
| DESCRIPTORS | Affirmative Action; *Civil Rights; Federal Aid; *Federal Government; Federal Programs; Government Role; *Hispanic Americans; *Public Agencies; *Public Policy |
| IDENTIFIERS | *Reagan Administration |

ABSTRACT

This paper identifies major changes in the area of civil rights which have been instituted during President Reagan's term in office and discusses their implications for Hispanics. Section I briefly outlines central themes of the Administration's attitude towards civil rights. Questions about their negative impact on Hispanics are raised. The next six sections discuss particular developments within a different Federal department or commission. Subjects are as follows: in section II, the Department of Justice (agency leadership, affirmative action, voting rights, fair housing, Federal grant recipient compliance, tax-exempt status for schools, and school desegregation); in section III, the Department of Education (use of the intent test, bilingual education, education block grants, and education for the handicapped); in section IV, the Department of Health and Human Services (increased voluntary compliance and block grants); in section V, the Department of Labor; in section VI, the Equal Employment Opportunity Commission (complaint processing and its Hispanic Study); and in section VII, the United States Commission on Civil Rights (firing of commissioners, reauthorization of the commissions, and new commission initiatives). In conclusion, the paper contends that the Reagan Administration's policies are regressive because they support the reversal or dilution of many long-established laws, rulings, regulations, and procedures. Their impact, it is argued, will be severe for Hispanics, who suffer as a group from pervasive discrimination and have not fully benefitted from the legal mandates for equality enacted in the past. (KH)

**********
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
**********

ED249312

# CIVIL RIGHTS IN CRISIS:
# THE REAGAN ADMINISTRATION'S REFORMS

Prepared By:

Janet Schroyer-Portillo
Senior Policy Analyst

National Council of La Raza
Office of Research, Advocacy and Legislation
Twenty F Street, N.W.
Second Floor
Washington, D.C. 20001
(202) 628-9600

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

A. ESCUDERO

NAT. COUNCIL LA RAZA

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

July 20, 1984

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

✓ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

UD023812

ACKNOWLEDGMENTS

This analysis was prepared with the extensive research assistance of Roger J. Rivera, the National Council of La Raza's Director of Community and Corporate Affairs, with the Office of Technical Assistance and Constituency Support. Information for the report was drawn from a number of sources, including the following:

Civil Rights: A National Not a Special Interest, U.S. Commission on Civil Rights, June 1984.

An Oath Betrayed: The Reagan Administration's Civil Rights Record in Education, Civil Rights Leadership Conference Fund, October 1983.

Federal Civil Rights Commitments: An Assessment of Enforcement Resources and Performance, U.S. Commission on Civil Rights, November 1983.

There Is No Liberty: A Report on Congressional Efforts to Curb the Federal Courts and to Undermine the Brown Decision, Citizens Commission on Civil Rights, October 1982.

In Contempt of Congress and the Courts, American Civil Liberties Union, February 1984.

Equal Employment Opportunity Commission and Hispanics, EEOC Hispanic Task Force, December 1983.

"Analysis of National Self Monitoring Reporting System," Women Employed, March 1984.

TABLE OF CONTENTS


| | | Page |
|---|---|---|
| I. | INTRODUCTION | 1 |
| II. | DEPARTMENT OF JUSTICE | 3 |
| | A. Agency Leadership | 4 |
| | B. Affirmative Action | 5 |
| | C. Voting Rights | 8 |
| | D. Fair Housing | 11 |
| | E. Federal Grant Recipient Compliance | 13 |
| | F. Tax-Exempt Status for Schools | 15 |
| | G. School Desegregation | 16 |
| III. | DEPARTMENT OF EDUCATION | 18 |
| | A. Use of the Intent Test | 19 |
| | B. Bilingual Education | 20 |
| | C. Education Block Grant | 22 |
| | D. Handicapped Education | 25 |
| IV. | DEPARTMENT OF HEALTH AND HUMAN SERVICES | 26 |
| | A. Increased Voluntary Compliance | 26 |
| | B. Block Grants | 27 |
| V. | DEPARTMENT OF LABOR | 29 |
| VI. | EQUAL EMPLOYMENT OPPORTUNITY COMMISSION | 32 |
| | A. Complaint Processing | 33 |
| | B. Hispanic Study | 34 |
| VII. | U.S. COMMISSION ON CIVIL RIGHTS | 35 |
| | A. Firing of Commissioners | 35 |
| | B. Reauthorization of Commission | 35 |
| | C. New Commission Initiatives | 38 |
| VIII. | CONCLUSIONS | 39 |

# CIVIL RIGHTS IN CRISIS:
# THE REAGAN ADMINISTRATION'S REFORMS

## I. INTRODUCTION

President Ronald Reagan's nearly four years in office have been marked by a campaign of actions which have substantially altered federal civil rights policies in this nation. Most of these administrative, regulatory and legislative changes have been designed to reduce the federal role in civil rights enforcement. The Administration has reversed many of the civil rights policies of its recent predecessors, limited federal enforcement of civil rights laws, sought to overturn many long-standing Supreme Court decisions related to civil rights, appointed new individuals to key leadership positions within civil rights agencies, proposed and supported major changes in existing civil rights legislation, and initiated the dismantlement of major portions of the federal government's civil rights enforcement and monitoring framework. These changes have been widespread, affecting programs in almost all federal agencies, related to all protected classes.

The Reagan Administration's policies in the area of civil rights appear to revolve around commitment to six central themes, including:

- "Regulatory relief" and "cost-effectiveness" in administering civil rights laws.
- Increased "volunteerism" and "good-faith efforts" in administering civil rights laws, as opposed to mandatory compliance and strong enforcement efforts.
- Rejection of race- and sex-conscious methods to combat discrimination, such as affirmative action, busing, and class-action suits, in favor of "color-blind" and "racially neutral" determinations.
- Cutbacks in the number of "overly protective" civil rights laws and protections.

- Rejection of the "effects" test, in favor of an "intents" test to prove discrimination. which would require proof that the party intentionally discriminated.
- Limits on "judicial activism," particularly by federal courts, which have been viewed as too expansive in their decisions.

These themes serve as some broad parameters within which to analyze the activities of the Reagan Administration in the area of civil rights. While Administration plans to carry out these objectives have sometimes failed -- particularly when checked by the Judicial and Legislative Branches of government -- attempts to dramatically alter federal civil rights policies through measures such as these have continued throughout President Reagan's nearly four years in office.

President Reagan has also succeeded in appointing several new officials who strongly support these goals to leadership positions within civil rights agencies and programs. The basic conviction linking many of these new appointees is their stated opposition to such civil rights tenets as affirmative action, busing to achieve school desegregation, and federal responsibility for enforcing the civil rights of all population groups. Some of President Reagan's nominees for key civil rights positions were found to have little or no management experience and no prior experience in the civil rights field. For the most part, such nominees withdrew their names from consideration for the positions, following a flood of bipartisan protests. However, several nominees who believe the federal government's role in civil rights enforcement should be reduced have been approved, and now hold important policy-making positions in the Administration. In addition, President Reagan's appointment of Sandra Day O'Conner as Justice to the Supreme Court has resulted in significant changes in the rulings being made by the Court. With the addition of O'Conner, who votes with other conservative Justices to form a majority, the Court has been moving towards much more narrow interpretations of civil rights and affirmative action laws.

The past four years under President Reagan have therefore resulted in major changes in federal civil rights policies and laws. The implications of these changes are far reaching and will have important effects on the enforcement of civil rights for many years to come. The impact upon Hispanics will be particularly severe, since for the most part Hispanics have begun to only recently benefit from many of the civil rights protections enacted during the past decades. Hispanics still suffer from large scale discrimination in such areas as school and housing segregation, employment, voting rights, educational opportunities, legal representation, provision of health and social services, immigration, and business development. Thus, the importance of continued support for, and enforcement of, civil rights protections is particularly important to Hispanics as they seek to attain equality in America.

This paper will identify some of the major changes in the area of civil rights which have been instituted during President Reagan's term in office. It will analyze these changes in federal policies, practices, and enforcement mechanisms by federal agency, and will thus examine the full range of actions which have taken place during the past three years to substantially alter the base of civil rights protections in this nation.

## II. DEPARTMENT OF JUSTICE

The Department of Justice (DOJ) is perhaps the single most important federal agency with civil rights enforcement responsibility. Charged with coordinating and reviewing the civil rights policies and regulations of most federal agencies, DOJ also is responsible for enforcing fair housing laws, school desegregation decisions, and voting rights laws, as well as a variety of other civil rights protections. DOJ has therefore played an integral role in implementing many of the changes proposed by President Reagan to alter federal civil rights protections.

A. Agency Leadership

For the past three years the Department of Justice has been headed by William French Smith, a specialist in labor and management law, who had no previous experience in the civil rights field. In confirmation hearings before the Senate, Smith stated that he felt qualified to be Attorney General even though he was not familiar with many aspects of criminal law, civil rights law, or law enforcment practices. He added: "I think it is safe to say a person could be in the Justice Department for several years and still not be aware of what its many divisions do." His appointment was not well received by the civil rights community, primarily due to his inexperience in the civil rights field.

In late 1983, William French Smith expressed his desire to return to private practice and asked the President to choose a new Attorney General. President Reagan nominated Edwin Meese, White House Counsel, to replace Smith. The nomination of Meese was met with outrage by the civil rights community, since Meese had been at the forefront of many White House efforts to dramatically change civil rights policies and programs, and had on many occasions demonstrated what they considered to be a dramatic lack of understanding or concern for issues affecting low-income and minority persons. As White House spokesperson on civil rights issues, Meese led Administration attempts to abolish the Legal Services Corporation. was deeply involved in efforts to afford tax-exempt status to schools which discriminate. obstructed for nearly a year and a half the reauthorization of the Voting Rights Act, permitted the U.S. Commission of Civil Rights to expire by refusing to negotiate with members of Congress. and stated that he had seen no evidence of hunger in America and felt that persons in soup lines simply were too lazy to work or wanted a free handout. While such positions led to widespread opposition to his appointment by civil rights organizations, it was his financial dealings and a number of conflict of interest charges which finally led to the

appointment of a Special Investigator to consider Meese's past. Until this investigation is completed, Meese's nomination is pending, and it is expected that no effort will be made to seek his appointment prior to the November 1984 elections.

The Assistant Attorney General for Civil Rights within DOJ is William Bradford Reynolds, a business lawyer from Washington, D.C. who readily admitted at the time of his appointment that he had no civil rights background or experience. Reynolds has been one of the main spokespersons for DOJ on civil rights issues, calling for major changes in civil rights policies which will lead to a truly "color-blind" society. Reynolds rejects civil rights enforcement mechanisms which take race or sex into account, and feels that past discrimination against a group is not grounds for corrective action in the present. Towards this end, DOJ has dramatically decreased the number of discrimination cases with which it has been involved and reversed the Department's position on some cases initiated by previous administrations. Numerous times during the past three years, DOJ and Reynolds have argued in court on behalf of institutions and individuals which allegedly discriminate, and against the plaintiffs who have brought suit, in an effort to change existing case law in the area of civil rights. Yet despite the scope of these actions, Reynolds continues to maintain that his division is simply attempting to enforce the laws as written by Congress and interpreted by the courts. Examples of these and other actions taken by DOJ's Office for Civil Rights under the administration of Reynolds are outlined in detail in the following section.

B. Affirmative Action

Among the most publicized positions of the Reagan Administration is its opposition to many of the affirmative action remedies used to combat employment discrimination. In testimony before the House Subcommittee on Employment Opportunities in September 1981, Assistant Attorney General Reynolds stated that the

Department intended to abandon goals and timetables, key components of effective affirmative action policies, as remedies for overcoming discrimination. Reynolds stated that DOJ would henceforth cease any efforts to apply "the use of numerical or statistical formulae designed to provide non-victims of discrimination preferential treatment based on race, sex, national origin or religion." This position counters years of interpretation by the Supreme Court and other federal courts, which have used goals and timetables as measurable means of determining compliance with affirmative action laws.

The Department of Justice signified its position on affirmative action in August 1981 by refusing to comply with a routine request from the Equal Employment Opportunity Commission (EEOC), which is responsible for enforcing employment discrimination laws and coordinating equal employment laws within the federal government. EEOC requested all federal agencies to submit their next year's affirmative action plans to EEOC for review. Assistant Attorney General Reynolds informed EEOC that the Department of Justice was "unable to conclude at present that there is statutory authority for compelling use" of goals and timetables in affirmative action planning, and that EEOC's request was therefore unwarranted. The Department of Justice refused to comply with further requests from EEOC for affirmative action information.

Statements such those articulated by Reynolds have led some private employers to abandon strong affirmative action plans, given the unlikelihood that DOJ will pursue enforcement of affirmative action laws. In fact, Reynolds announced in December of 1981 that DOJ was seeking a suitable case to test anew the constitutionality of voluntary affirmative action programs for private employers, to reverse the 1979 Weber decision. Reynolds stated, "My own view is that Weber is wrongly decided." These plans have been put forth by DOJ even though no laws

have been changed and no new evidence has been uncovered which would lead to a different interpretation of existing law. Thus, Reynolds has stated his intent to reverse the law governing affirmative action programs, based on his personal opposition to the mandates.

While the Department of Justice has been unsuccessful in overturning the Weber decision, the Supreme Court did decide in the Department's favor in an important affirmative action case involving Memphis firefighters. On June 12, 1984, the Court overturned a lower court decision which required the Memphis fire department to lay off White employees with more seniority, rather than Black employees who had been hired under a court-approved affirmative action plan. Thus, the Supreme Court ruled in favor of seniority rights over affirmative action remedies. Justice Byron R. White, writing for the five members of the majority, went further, however, by stating that the law permits "only" remedies that reward individuals who can prove they are "actual victims" of illegal discrimination, rather than groups of minorities who themselves may not have suffered from discrimination in this particular job setting. This statement led the three dissenting Supreme Court Justices -- Blackmun, Brennan, and Marshall -- to "suggest" that the majority could not have meant what they appeared to say, that "race-conscious relief is never appropriate" under Title VII of the Civil Rights Act, because that would ignore the "consensus" of every appeals ruling on the issue. In the minds of most civil rights leaders, this ruling countered some of the basic tenets of affirmative action programs, which have sought to offset historical discrimination which prevented minorities from being hired in the past and gaining the seniority necessary to ensure equal treatment in the present.

The Supreme Court ruling was heralded as a major victory for the Reagan Administration. Reynolds applauded the decision as an "exhilarating" one that propels us away from "race-conscious remedies." Solicitor General Rex E. Lee, who

argued the Administration's position before the Court, cited the decision as a "slam dunk," and "one of the greatest victories of all time." However, it is not clear to many whether the decision can be extended to apply to hiring practices under affirmative action plans, as well as to layoffs. Nonetheless, the Department of Justice has interpreted this decision as barring all employment "quotas" based upon racial considerations, and since there are currently no cases pending before the Supreme Court which will clarify the full extent of the decision's application, it will be a number of years before the Supreme Court rules on a similar case to further clarify its intent. Therefore, the Memphis decision signifies a dramatic change in affirmative action case law, and will have major ramifications for minorities and women who suffer not only from past discrimination, but also ongoing employment discrimination.

C. Voting Rights

The Voting Rights Act (VRA), first enacted by Congress in 1965, has effectively and comprehensively addressed a myriad of discriminatory practices which have long denied minorities their right to vote, seek elected office, and make their vote count. Enforced by the Department of Justice, the VRA has resulted in dramatic increases in minority enfranchisement and empowerment. However, despite major successes in eliminating such blatantly discriminatory practices as poll taxes and literacy tests, more sophisticated types of voting discrimination remain, through gerrymandered districts, redistricting plans, and annexations which have sought to dilute the minority vote, and through changes in election procedures which have attempted to make it more difficult or inconvenient for minorities to vote. All of these discriminatory actions are prohibited nationwide under the Voting Rights Act; however, most violations are identified through a provision which requires "pre-clearance" of changes in all voting and election laws for nine specific states and portions of 13 other states which have records

of discriminatory voting practices. In addition, the VRA was amended in 1975 to require bilingual elections for areas where five percent or more of the voters are of a single language minority. The Act also provides for the appointment of federal election registrars, observers, and examiners to monitor elections and ensure compliance with nondiscrimination requirements.

The Voting Rights Act was set to expire in 1982 and required Congressional reauthorization prior to that date. The House of Representatives held hearings in the summer of 1981 and heard a steady stream of witnesses testify to the pivotal role the VRA had played in safeguarding voting rights, and the ongoing importance of eradicating all forms of voting discrimination. The Department of Justice, while repeatedly asked to testify before the House, declined to state its official views on the VRA extension. In October of 1981, the House passed a strengthened VRA extension by an overwhelming vote of 389-24. Passage of a Senate bill was repeatedly delayed as Senators sought the views of the Administration, which continued to refuse to testify until DOJ had studied the legislation further.

Finally in early 1982, Assistant Attorney General Reynolds testified in opposition to many of the provisions of the proposed reauthorization legislation. A major Administration objection centered on the continued use of an "effects" test to prove discrimination in voting practices. The Administration wanted plaintiffs to be required to prove that election officials <u>intended</u> to discriminate, rather than simply needing to prove that the <u>effect</u> of the election practice was discriminatory. The Department argued that use of the effects test would lead to proportional representation and "quotas in the electoral process." Civil Rights groups charged that by seeking an intent standard, the Administration was attempting to make the Voting Rights Act as ineffective and unenforceable as possible. They noted that the House-passed bill clearly prohibited using proportional representation arguments as the sole basis for identifying a violation.

Despite opposition from the Department of Justice, the Senate approved a bill which was very similar to the House-passed legislation, with slightly stronger language regarding proportional representation, but with continued requirements for use of the effects standard. Aware of the inevitable passage of a bill which did not meet the Administration's standards, President Reagan eventually labeled the Senate bill a compromise and supported the legislation. The bill, which was finally signed by President Reagan in June 1982, extended the pre-clearance requirements for 25 years and the bilingual provisions for 10 years, allowed for easier "bail-out" for covered jurisdictions which are able to show a clean anti-discrimination record for 10 years, and incorporated the effects test rather than the intent standard.

However in the June 25, 1984 Federal Register, the Department of Justice published a new list of counties covered by the bilingual provisions of the Voting Rights Act. Through determinations made by the federal Census Bureau, there was a purge of over 50 percent of the counties required to provide ballots and election information in languages other than English. Counties with very high language minority populations -- such as Los Angeles, San Francisco, and San Diego counties in California, Maricopa county (Phoenix) in Arizona, Denver and Boulder counties in Colorado, Harris county (Houston) in Texas, and Honolulu county in Hawaii -- have all been removed from the list of covered jurisdictions. It is still unclear exactly what the impact will be of this reduction, as several counties have decided to continue to provide bilingual ballots for upcoming elections, recognizing the need for them in their districts. Others, however, may abide by the Census Bureau's determination and immediately discontinue their use. It is possible that with the elimination of bilingual requirements for these areas, many Hispanics who have become involved in the political process in recent years may not be able to participate in upcoming elections.

D. Fair Housing

The Department of Justice is also responsible for enforcing federal Fair Housing laws which prohibit discrimination in the sale, rental or financing of housing. DOJ's role in eliminating housing discrimination is key, since while the Department of Housing and Urban Development (HUD) investigates housing complaints and negotiates for voluntary compliance, only DOJ can enforce the laws through litigation. While the number of housing discrimination cases filed since the law's inception in 1968 has been relatively few, DOJ's efforts have been praised under both Republican and Democratic administrations for the Department's conscious efforts to prosecute "high quality" cases which have set important precedents and addressed complex issues with broad impact. DOJ's success in this area is indicated by the fact that it lost only two of the more than 300 cases brought prior to 1979. Moreover, DOJ has obtained numerous consent decrees from public and private agencies which outline their commitment to affirmative housing action. In addition, DOJ has been successful in arguing before the courts that actions which have the effect of discriminating against a protected group may be sufficient to prove housing discrimination, and that it is not necessary to prove that the defendents intended to discriminate through their actions.

Assistant Attorney General Reynolds announced in 1981 that the Department would institute major changes in the enforcement of fair housing laws. DOJ no longer brings action against local governments which have exclusionary zoning laws and similar practices which have significant discriminatory effects. In addition, DOJ has abandoned the "effects" test in determining fair housing violations, despite the clear legal standard which upholds the use of the effects test in fair housing litigation. Failure to use the effects test contributed significantly to DOJ's defeat in Angeli v. Zinsser, the first loss ever against a local government.

Reynolds particularly distressed fair housing advocates in July of 1984 when he publically stated that the federal government should not be attempting to bring about integration through fair housing, but should simply be trying to ensure that race is not taken into account in the selection of tenants and buyers of homes. Reynolds explained that he did not think that "any government ought to be about the business to reorder society or neighborhoods to achieve some degree of proportionality" in racial composition in housing. This position is counter to recent court decisions which require the federal government to "reorganize" blatantly segregated housing patterns in public housing through reassignment of minority and white tenants.

Reynolds' statement and DOJ policy changes are indicative of DOJ's general thrust to narrow the scope of civil rights protections through reinterpretation of the intent of the law. The result has been a dramatic decline in the number of fair housing cases being litigated by DOJ under the Reagan Administration, with an average of only two new cases per year during the President's first two years in office, as compared to 19 new cases per year from 1978-1980. In addition, this policy shift sets the stage for upcoming Congressional consideration of the reauthorization of the Fair Housing Act. Given DOJ's current position on the scope and intent of the law, civil rights groups expect a major battle to ensue regarding the future direction and enforcement of federal fair housing protections.

Two versions of the Fair Housing reauthorization bill were introduced in Congress in early 1983. While the bill does not expire until 1985, members have been considering the various alternatives, since provisions vary greatly. The Administration's versión, introduced by Senator Howard Baker (R-TN) and Representative James Sensenbrenner (R-WI), would emphasize resolution of fair housing

complaints through conciliation agreements, with possible referral to the Department of Justice for judicial action if conciliation fails. Thus, the only binding enforcement of the law would be a judicial determination on a complainant's behalf, similar to current law. The second version, introduced by Senators Edward Kennedy (D-MA) and Charles Mathias (R-MD) and Representative Hamilton Fish (R-NY), would provide for administrative relief, creating a new Fair Housing Review Commission within the Department of Housing and Urban Development (HUD). Fair housing cases would be heard by administrative law judges who would be able to enforce fair housing laws and impose fines and penalties. This bill would also permit HUD to initiate complaints if discriminatory practices were identified, instead of having to wait for persons to file charges.

Thus, the future of fair housing legislation and enforcement is uncertain; however, there is bipartisan agreement outside the Reagan Administration that much still needs to be done to overcome the discriminatory practices which have resulted in continued housing segregation for Hispanics and other minorities. Civil rights groups agree that only through strong federal commitment, and through the adoption of stronger and more accessible methods of enforcement, can housing discrimination be addressed and eventually eliminated.

E. Federal Grant Recipient Compliance

On February 28, 1984, the U.S. Supreme Court ruled in Grove City College v. Bell that schools receiving federal funds must ensure nondiscrimination against women only in the particular program which receives the funds, rather than having comprehensive civil rights policies in all programs. In the case of Grove City College, the school received only federal financial aid monies, and therefore only the Financial Aid Office is required not to discriminate under Title IX of the Education Amendments of 1972.

Early in President Reagan's term, the Department of Justice had expressed its desire to narrow the scope of civil rights coverage for federal grant recipients, and actively pursued cases such as Grove City as a means of doing this. The Department's position in this case was unprecedented, countering the interpretations of both Democratic and Republican administrations, which always required all agencies and institutions receiving any federal funds to comply with federal civil rights laws in all their programs. This was in keeping with Congressional sional intent that no federal funds be used to directly or indirectly subsidize discrimination.

Following the Supreme Court's decision, Assistant Attorney General Reynolds stated that the Justice Department planned to apply the Grove City decision to all civil rights laws governing federal grant recipients, rather than just Title IX, which applies only to women in educational institutions. Thus, Title VI of the Civil Rights Act which applies to racial and ethnic minorities, Section 504 which applies to the handicapped, and the Age Discrimination Act which applies to older persons, would all be subject to program-specific coverage.

In response to the Supreme Court's ruling and the Justice Department's plans, members of both Houses of Congress introduced identical bills to address the Grove City decision. The legislation would simply reassert Congressional intent regarding comprehensive civil rights coverage under the four major laws. Leading members of both parties, in both Houses, joined in cosponsoring the bill, and distinguished Republican leaders expressed their intent to swiftly pass the bill, regardless of the Administration's position. The legislation passed in the House of Representatives by the overwhelming vote of 275 to 32. However, despite cosponsorship by 63 Senators, consideration in the Senate has been delayed by members of the committees with jurisdiction over the bill, who oppose the legislation.

In testimony before both Houses, representatives from the Johnson, Nixon, Ford and Carter administrations all testified that the Department of Justice had always interpreted the civil rights laws as providing broad coverage in all programs operated by a recipient of federal funds. In contrast, President Reagan's Department of Justice testified that the laws were intended to provide for narrow coverage, and that the Grove City decision would not change the requirements of the laws. Yet, based on the Supreme Court decision, DOJ sent letters to several educational institutions under investigation for civil rights violations, stating that investigations had been dropped since violations had not occurred in the program receiving federal funds. Such a narrow application of the civil rights laws applying to federal grant recipients would minimize the ability of the federal government to assure such agencies and institutions assure nondiscrimination in their total operations, thus greatly restricting civil rights protections.

F. Tax-Exempt Status for Schools

The Justice Department also determined, in January 1981, that the Internal Revenue Service (IRS) could no longer deny tax-exempt status to private schools which discriminate, arguing that this action went beyond IRS' authority. This authority had been assumed to be included in existing civil rights legislation, and the appropriateness of the denial of tax-exempt status had been affirmed by several federal court cases. The Reagan Administration stated, however, that there was no statute governing this practice, and asked Congress to pass specific legislation on this issue. Many Congressional leaders considered the legislation unnecessary and believed that the Justice Department's action was without legal foundation. This view was also supported by a majority of lawyers within DOJ's Civil Rights Division, who signed a letter stating their opposition to the Department's determination. Therefore, Congress refused to consider any further legislation on this issue.

At the time of DOJ's controversial decision, two cases relating to this issue were pending before the Supreme Court. The Administration asked the Court to declare the two cases moot, in light of its new policy. The Court instead combined the two cases and appointed special counsel to represent the IRS' point of view -- since the Department of Justice was arguing on behalf of the plaintiffs. The Supreme Court decided the Bob Jones University case in favor of the IRS and required it to continue its practice of denying tax-exempt status to any discriminating school.

G. School Desegregation

The Department of Justice is also charged with achieving equal opportunity and desegregation in education. Before the House Subcommittee on Civil and Constitutional Rights in November 1981, Assistant Attorney General Reynolds announced that DOJ's "future enforcement policies will be aimed" not at eliminating segregation by all permissible means, but at remedying "substantial disparities in the tangible components of education" between minority and white students. This has been interpreted to mean that the Department will seek to make minority schools "equal" to white schools, even if they remain "separate" -- a concept rejected by the Supreme Court in 1954 in Brown v. Board of Education. The Department's position was further clarified by Reynolds' statement that "we are not going to compel children who don't choose to have an integrated education to have one."

In keeping with this new policy perspective, the Department has brought few school desegregation cases during its tenure. Instead, it has often sought to reverse or weaken existing school desegregation orders. For example, in East Baton Rouge, Louisiana, the Justice Department has supported Black parents for 26 years in their efforts to end segregation in a school system which was cited by the courts for its "failure of leadership, courage and wisdom." In 1979, Presi- President Carter's Department of Justice intervened in the case, advocating a more extensive busing program than was eventually ordered by the Court. However,

In December 1982, President Reagan's Department of Justice presented an alternative school desegregation plan for East Baton Rouge which would permit students to attend the school of their choice and which includes a magnet school plan of "Montessori schools" in Black neighborhoods and "fundamental, back to basic" schools in White neighborhoods. The Department conceded that some racially segregated schools would continue to exist under this plan; however, the plan was implemented.

The Justice Department has also opposed voluntary school desegregation plans in large cities. The Seattle school system, along with two other Washington school districts, had adopted and carried out plans to desegregate their public schools. The State of Washington opposed this action and responded with a state-wide referendum which, after voter approval, required the districts to undo the desegregation which had been achieved. The Carter Administration's Justice Department had argued in support of Seattle and the minority parents, citing the State's intervention as being racially-motivated and in violation of the Fourteenth Amendment. Two lower courts agreed with this position, and sustained Seattle's desegregation plan. The case was appealed to the Supreme Court and came before it after the Reagan Administration had taken office. President Reagan's Justice Department changed sides in the case, and argued on behalf of the State of Washington, claiming that the State had the authority to instruct local school districts on how to assign students to schools and that its actions were not racially-motivated. Despite the Justice Department's new position, the Supreme Court ruled in favor of the Seattle school district and found the anti-busing statute unconstitutional.

The Department of Justice has also supported Congressional actions to reduce the authority of the federal government to address racial segregation in public

schools. Legislation introduced during the 97th Congress by Senators Jesse Helms (R-NC) and Bennett Johnston (D-LA), and supported by the Administration, would not only have limited the jurisdiction of the federal government, but also stripped the federal courts of their ability to order busing to remedy segregation. The Helms-Johnston amendments would have:

- Prohibited the Justice Department from getting involved in any school desegregation case in which pupil transportation might result;
- Prohibited federal courts from issuing desegregation orders that require busing beyond neighborhood schools; and
- Permitted the Attorney General to reopen closed cases in order to stop busing.

These provisions were eventually passed by the Senate in March of 1982 and were sent to the House of Representatives with the Justice Department's full endorsement. Attorney General William French Smith wrote to the House Judiciary Committee outlining the Department's contention that the Helms-Johnston amendments were constitutional. However, the Committee refused to approve the provisions and the bill was not brought to the floor prior to Congressional recess. Nonetheless, actions such as these, which seek to curtail the role of the Judicial Branch of government and undermine important civil rights remedies, remain of serious concern to those committed to upholding the Constitution and implementing school desegregation.

## III. DEPARTMENT OF EDUCATION

The U.S. Education Department (ED) is responsible for ensuring that all educational institutions and agencies which receive federal funds, either directly or indirectly, do not administer their programs in a discriminatory manner. It must ensure nondisrimination in all State education agencies and vocational rehabilitation systems, some 16,000 school systems, 3200 colleges and universities, 10,000 for-profit schools, as well as libraries, museums and other fund recipients.

The Department is headed by Terrel Bell, who in a letter to Senator Paul Laxalt (R-NV) in April 1981, stated:

> ... the Federal courts may soon be after us for not enforcing civil rights laws and regulations. Your support for my efforts to decrease the undue harassment of schools and colleges would be appreciated. It seems that we have some laws we should not have and my obligation to enforce them is against my own philosophy....

Under this type of leadership, the Department of Education has carried out a number of policy changes in enforcement and regulatory requirements. These changes directly affect the educational attainment of minority students who only recently have begun to gain widespread educational progress, as a result of many of the civil rights protections enacted in recent years. Education civil rights experts agree, however, that much still needs to be done to achieve true educational equity in the public school systems and that the policy changes incorporated by the current Department of Education have instead undermined many of the successful actions taken previously by the federal government to eliminate educational discrimination.

A. Use of the Intent Test

The Department of Education, in actions similar to those of the Department of Justice in Voting Rights and Fair Housing cases, is attempting to apply the "intent" standard to educational discrimination, as opposed to the "effects" standard, which current Department regulations require. For example, the Department of Education declared the Simms Independent School District in Texas to be in compliance with federal civil rights laws, despite a finding of discrimination in the distribution of athletic awards. The Department determined that the school district had not acted with a discriminatory purpose, and therefore there was no violation of law.

The Department has also considered revisions in civil rights laws governing the rights of women in educational institutions which would reflect an intent standard. While the Department has not yet made any regulatory changes in this regard, it has proceeded to apply an "intent" standard in several cases.

B. Bilingual Education

Among the most important educational programs for Hispanics and other minority language group is the Title VII Bilingual Education Program, which provides financial and technical assistance to local school districts seeking to teach their students English and other required subjects through the use of bilingual instruction. This program, administered by the Department of Education, has been the subject of numerous proposed policy changes and funding reductions throughout the past three years, including early proposals to include it in an education block grant to the states.

Congress has been struggling to enact reauthorization legislation for the program, which expires in October 1984. The Administration authored legislation which would severely cut funding for the program and significantly alter some of its basic principles. The bill would limit the program to only those children who speak no English, regardless of their level of proficiency in English or their abilities to read, write, and learn in English. In addition, this legislation would permit schools to use bilingual education funds for any type of program which the local school district contended would assist them in learning English, including programs which were taught totally in English, with no use of the students' native language. This is in direct opposition to the long-established goal of bilingual education, which uses both English and the children's native language as tools in helping the children become fully proficient in English while learning subject matter, so that they do not fall behind in school. This legislation would also place an absolute five-year limit on assistance to

any school district -- regardless of changes over time in the school population -- and would remove the current requirements that programs include specific minimal components in order to be funded. Finally, the Administration's bill would also eliminate separate funding for bilingual vocational education programs.

An alternative bilingual education reauthorization bill has been introduced, and approved by the House Committee on Education and Labor, which would continue to support bilingual educational programs for students in need of such special services. The Committee-passed bill would preserve existing funding and provide resources for a range of important programs. This proposed legislation also includes training and re-training programs for teachers, requirements for mastery of basic academic curricula, use of state-of-the-art educational technology, improved evaluation of programs, and increased parental involvement. This alternative bill has been scheduled for consideration by the full House as part of the Omnibus Educational Amendments of 1984, with no action taken by the Congress to further consider the Administration's bill.

The Department of Education has also decided to introduce a "model" program, financed by the Department's discretionary funds, for education vouchers for children in need of bilingual education. The Department has issued regulations governing an experimental voucher program for limited English-proficient children in which a certain level of funds would be allocated for each child to be spent on programs of the parents' choice. For the most part, these programs would be administered outside of the school system by private service providers. Proponents of bilingual education, including members of Congress, were outraged by this test program, since the idea of educational vouchers undermines the very nature of the program, since it does not provide any assurances for quality education in desegregated schools, nor does it guarantee that all children in need of bilingual assistance will be identified and educated.

Finally, the Department has sought to limit the civil rights of language minority students by "reassessing" its responsibilities in assuring equal education opportunity under provisions of the Civil Rights Act of 1964. The Supreme Court ruled in 1974, in Lau v. Nichols, that the Department was correct in its determination that students with limited English-proficiency have a guaranteed right to equal participation in public schools. Therefore, schools are required to provided special services to language minority students which will ensure that their civil rights are not violated. Following the Supreme Court decision, the Department of Health, Education and Welfare issued the Lau Remedies, which outlined ways in which school districts could comply with these requirements, but which did not have the force of formal regulations. After years of discussion and resolution, and a 1978 court order, President Carter's Department of Education finally issued proposed regulations in 1980 which outlined the legal responsibilities of school districts for enforcing these rights. Congress delayed the enforcement of these requirements until 1981; and even before the regulations could take effect, the Reagan Administration withdrew them and rescinded the Lau Remedies. To date The Department of Education has failed to issue new regulations and has instead informed local school districts that they may re-negotiate compliance agreements with the Department. Therefore, there are currently no regulations or guidelines available to define school districts' responsibilities, or limited English-proficient children's rights, regarding equal access to education.

C. Education Block Grant

The Reagan Admininistration proposed and was successful in achieving the enactment of an education block grant to the States. The block grant which was passed in 1981 consolidated 28 formerly categorical programs into one program administered by the States. While the number of programs was much smaller than that originally proposed by the Administration, the impact of this large-scale

consolidation was very significant. Particularly important, from a civil rights and minority perspective, was the inclusion of the Emergency School Aid Act (ESAA) in the block grant. As a categorical program, ESAA provided local school districts with funds to implement court-ordered and voluntary school desegregation efforts. As the only federal program specifically targeted to desegregation activities, ESAA had been integral in supporting efforts to achieve desegregation in many areas of the country. Under the block grant, ESAA monies, which represented over 36 percent of the funds consolidated in the block grant, do not need to be used for desegregation activities, and in most states very little block grant money is being used for such efforts. The block grant has led to a significant decrease in the amount of funds going to large urban school districts which previously received ESAA monies; some cities have lost over 80 percent of their desegregation funds. Many school districts have had to forfeit integrated schools, as a simple cost-saving measure. In recognition of the devastating effects of this block grant, Congress passed legislation, which will soon be sent to the President, which re-establishes ESAA as a categorical program. However, for the last two years school districts have been without adequate funds to finance desegregation.

In addition to the effects resulting from the inclusion of ESAA, the Education Block Grant has led to a number of other civil rights concerns. Programs consolidated in the block grant were very diverse, and for the most part were targeted for specific groups of children. Under the block grant, states have almost total discretion in determining how monies will be distributed and local school districts may choose to use the funds for essentially any purpose. States are required to distribute funds based on the number of school-aged children in each district, and may choose to include other factors based on the number of "high-cost" students. Each state is permitted to define "high-cost student" and to determine the weight of such factors in its distribution formula. Over 25

different factors have been used by various states, including such things as: income levels, handicap, limited English-proficiency, racial and ethnic composition, and desegregating districts. However, few states have chosen to include factors such as desegregation or racial composition in their formulas. Others have distributed only a small proportion of the funds based on high-cost factors. As a result, funds which were previously targeted to children with special needs are now being distributed primarily based on the school-aged population, which negatively affects resources for low-income, minority, handicapped, and limited English-proficient students. In addition, even if a number of high-cost factors are used to distribute the funds, there are no requirements for local school districts to use the monies to serve those high-cost students who generated the funds.

The Education Block Grant includes several requirements which are detrimental to minority students, including extension of federal funds to serve students in private schools, leaving less money available for public school students. The block grant also has almost no requirements for collection of data on how monies are spent or which students are served, making it nearly impossible to ascertain whether the funds are being spent in accordance with the law.

At the federal level, the Department of Education has given states new responsibility for identifying and handling civil rights violations under the block grant. States have 60 days to resolve complaints brought under the block grant, with the federal government becoming involved only after complaints have been referred by the States. Thus, while the Department of Education has retained its ultimate responsibility for enforcing civil rights laws, it is depending more and more heavily on States to promote voluntary compliance through mediation and informal conciliation.

D. Handicapped Education

The Education for All Handicapped Children Act, Public Law 94-142, was passed by Congress in 1975 to address the special educational needs of handicapped children. The legislation was passed in response to findings that over one million handicapped children were excluded from public schools entirely, and that fewer than half of all disabled children were receiving appropriate educational services. In 1981, President Reagan attempted to have P.L. 94-142 repealed by Congress. When this approach failed, the Administration recommended that funding for the program be dramatically reduced. However, Congress refused to carry through on this proposal.

In August 1982, the Department of Education issued proposed changes in regulations governing the handicapped program, citing them as an attempt to streamline policy and reduce costs. Among other changes, the proposals would have:

- Weakened requirements for parental consent and participation;
- Removed evaluation procedure protections by denying a child a second evaluation unless a hearing officer requested it;
- Eliminated requirements that schools re-evaluate children every three years;
- Allowed school districts to reduce services by permitting them to set their own reasonable limits of service; and
- Enabled school districts to resegregate handicapped children if officials believed that the children would "disrupt" regular classes or if officials decided to send the children to special schools for special services.

These proposed changes were met with overwhelming outrage by the public and members of Congress. Finally, in September 1982, Secretary Bell announced that the Administration might have gone "too far" and that he was withdrawing six controversial sections of the proposed regulations. Following further opposition, the Administration finally agreed to withdraw the changes completely.

## IV. DEPARTMENT OF HEALTH AND HUMAN SERVICES

The U.S. Department of Health and Human Services (HHS) is responsible for enforcing a wide range of civil rights laws which prohibit discrimination based on race, ethnicity, sex, handicap and age. The HHS Office for Civil Rights must ensure compliance with these laws by all hospitals, health facilities, social service agencies, public assistance agencies, adoption and foster care agencies, day care centers, and nutrition programs which receive funds from the Department. The Department has always suffered from major financial constraints in enforcing civil rights laws, and in 1980 projected a need for at least 100 additional positions. Instead, the Office for Civil Rights lost more than 70 staff during the past three years through Reductions in Force (RIFs) instituted by the Reagan Administration. The U.S. Commission on Civil Rights issued a 1983 report which outlined HHS' plans to target many of these required layoffs to the legal services staff, which conducts administrative proceedings to terminate funds and assists in preparing cases for litigation. This targeted cutback appears to suggest that the Office for Civil Rights plans to develop fewer cases that would meet the standards necessary for enforcement action. During the past three years, this shift from strong enforcement efforts has been evidenced not only through staffing changes, but also through significant changes in policy and methods of operation.

### A. Increased Voluntary Compliance

One of the major new initiatives within HHS' Office for Civil Rights is increased emphasis on voluntary efforts to secure compliance. The Department is thus choosing to negotiate with potential violators and urge them to change their practices, prior to sending official letters outlining their violations. While negotiation is often an important step in bringing about resolution, HHS' emphasis

on these activities often has resulted in decreased guarantees of strong enforcement measures if negotiation fails. Many agencies and institutions do not feel compelled to comply with federal civil rights laws, since they feel there is no real threat to their funding or programs if they fail to comply voluntarily.

HHS' emphasis on voluntary activities is also evidenced through the introduction of "project reviews" as opposed to "compliance reviews." Compliance reviews have been used extensively in the past to identify violations through comprehensive review of all available information which would permit the identification of "systemic" types of discrimination, which affect group(s) of persons, rather than single individuals. Despite the identified success of comprehensive compliance reviews by the U.S. Commission on Civil Rights and other federal agencies, the current Department of Health and Human Services has turned to less extensive project reviews which use information from a single survey of particular types of funded agencies or institutions. Focusing on very basic civil rights issues, and often on a few issues in each survey, the surveys used in project reviews often do not even provide information related to the more complex or special types of violations which might be occurring within a funded agency. HHS' first set of project reviews has been targeted on hospitals, using information obtained in a survey conducted in 1981 which emphasizes compliance with civil rights protections for the handicapped. Such a narrow focus in HHS' civil rights investigation process severely limits the success of the Department in identifying all types of discrimination which may occur in federally funded agencies.

B. Block Grants

One of the new responsibilities undertaken by HHS during President Reagan's term has been the administration of new block grants to the States. HHS has responsibility for administering seven block grants, including: (1) Maternal and Child Health; (2) Preventive Health; (3) Primary Health Care; (4) Alcohol, Drug

Abuse and Mental Health; (5) Community Services; (6) Social Services; and (7) Low-Income Energy Assistance. These block grants, which consolidated numerous federal categorical programs, were enacted by Congress in 1981 and included few legislated requirements for administration, oversight or evaluation. HHS chose not to issue comprehensive regulatory direction for states, originally publishing only a few pages of regulations for all the block grants under its jurisdiction. For the most part, these regulations simply restated the legislative language and provided almost no guidance to the States. One of the most ignored areas of transferred responsibility was the enforcement of federal civil rights laws. The regulations simply affirm that the States and their grantees are responsible for prohibiting discrimination, and do not specify how they should go about doing so. State applications for block grant monies require only that States assure the federal government that they do not intend to discriminate, and in some cases, this assurance does not even have to be specific, but can be inferred to be a part of the State's general agreement to comply with all block grant requirements. The broad discretion given to States has led to minimal civil rights enforcement under the block grants in several States.

After publishing the original block grant regulations, HHS needed to develop guidelines for its own procedures in administering the programs. For two years after enactment of the block grants, HHS failed to issue any regulations governing civil rights procedures. During this time HHS regional offices and the States were told to inform persons filing complaints under the block grants that HHS was in the process of developing regulations and that their complaint would not be investigated until the guidelines were issued.

When HHS guidelines were finally issued, States were assigned new responsibilities for securing voluntary compliance when civil rights violations occur under the block grants. Governors are given 60 days to negotiate with violators

and may submit one or more proposed remedies to the appropriate HHS regional office for review. The regional offices have 15 days to review and respond to each recommended remedy -- time which is not counted against the Governors' 60-day period. Therefore, a complaint might not be resolved for an extended period of time, as a State, which may have little time or experience to devote to federal civil rights enforcement, attempts to resolve the violation. If a State fails to resolve a complaint, HHS assumes responsibility for obtaining resolution through voluntary compliance, with formal enforcement actions used as a last resort.

Thus, there is almost no positive action being taken to ensure compliance with federal civil rights laws under the block grants. At best, a complaint must be filed before consideration is given to addressing possible violations, and even then it is uncertain if the issue will ever be resolved, given the complex and confusing administrative procedures which must be adhered to in the resolution of a complaint.

## V. DEPARTMENT OF LABOR

The Department of Labor's (DOL) principal civil rights responsibility lies in the enforcement of Executive Order 11246 which governs affirmative action programs for federal contractors. This Executive Order prohibits employment discrimination on the basis of race, color, religion, sex, or national origin by businesses which choose to contract with the federal government. It mandates all contractors to undertake affirmative action programs and to establish target goals and timetables for minority recruitment. DOL is responsible for enforcing this law, and can withhold payments or contracts, issue sanctions or initiate litigation if contractors fail to comply with the requirements.

The Department's Office of Federal Contract Compliance (OFCCP), which is responsible for enforcing 11246, proposed new regulations in May 1981, and again

In January 1982 and April 1983, which would have dramatically altered requirements under the Executive Order. The previous regulations provided federal contractors with specific guidance in designing affirmative action plans and setting realistic goals and timetables for hiring and recruitment. The proposed changes in regulations, while varying to some extent at every issuance, would have had the following results:

- The number of contractors required to prepare full written affirmative action reports would have been severely reduced, by raising the threshold levels for the number of employees and the size of grants, eliminating aggregation (compilation of information for contractors with more than one federal contract), and allowing short-form affirmative action plans.

- Back pay awards to victims of discrimination would have been severely curtailed, since each person would have been required to prove his or her individual case, thus replacing current regulations which identify groups of employees who have suffered from discriminatory practices and who are owed back pay. In addition, the proposals included a two-year statute of limitations for back pay awards.

- Class action suits would have been virtually eliminated since all victims of discrimination would have needed to be identified, and there would have been no third-party suits.

- Pre-award reviews would have been completely eliminated, thereby removing one of the most important components of the law which provides a mechanism for determining if contractors have a history of discriminatory practices.

- Standards for sex discrimination in the areas of sexual harrassment and pregnancy discrimination would have been weakened.

While these regulations have been officially proposed twice, and seriously considered a third time, each issuance of changes has been met with public outcry and Congressional opposition. Therefore, the Department has taken no further action to officially change regulations governing the Order.

However, despite its inability to change the regulations, OFCCP has been carrying out many of its proposed changes without regulatory authority. DOL has all but eliminated pre-award reviews, conducting only 130 in Fiscal Year 1982, as

compared to 594 in FY 1980, and scheduling none for Fiscal Years 1983 or 1984. Therefore, the record of companies which receive billions of dollars in federal contracts are not reviewed for previous civil rights violations.

OFCCP has also substantially reduced the number of affirmative action violations which are resolved through conciliation agreements. These agreements require a violating contractor to provide relief, often back pay, to members of the group determined to be affected by the discrimination. In FY 1980, over $16 million was awarded through financial settlements, while in FY 1982 only $7.3 million was awarded to victims of discrimination. Instead of identifying and pursuing cases which would result in conciliation agreements, the Department has instead focused on violations stemming from paperwork errors, which do not directly affect victims of employment discrimination.

The Department has also initiated a new system in which it negotiates with major corporations to develop affirmative action agreements which can be monitored by the corporations themselves. This National Self Monitoring Reporting System would replace standard compliance review activities now conducted by OFCCP. DOL has already negotiated such agreements with several corporations, and has found them very receptive to this type of agreement. Civil rights groups are outraged by this system since it seriously undermines OFCCP's enforcement responsibilities The Self Monitoring System includes the following provisions which counter current regulations:

- The corporations must submit only national reports, which outline their affirmative action plans for all of their offices, divisions, factories, facilities and subsidiaries nationwide, with no breakdowns for individual sites.
- The reports do not include separate information for each minority group, but instead include all minorities under a general category. Likewise, there is no breakdown by sex for minority groups.

- Job groups are reported based on similar salary ranges, rather than by type of job. Thus, clerical workers, technicians, and maintenance workers might all be included in the same category.

- The reports compare the record of a given corporation with its own previous year's report, measuring the company only against itself. Thus, factors such as the availability of minorities and women in the workforce are not considered.

- In some extreme cases, a corporation might be required to submit additional information pertaining to the actual availability of minorities and women in the workforce (this is one of the basic factors used in the development of current affirmative action plans). However, corporations need only use national data, rather than local statistics, which does not accurately portray the availability of workers in a particular site. This is particularly important for Hispanics, since they are concentrated in certain cities and regions.

- OFCCP will require additional information only if there is a very significant discrepancy in the data reported, at a level which would previously have prompted immediate remedial action.

- OFCCP reviews or investigations are limited to specific job group issues, and cannot focus on overall systemic policies, such as training opportunities, equal pay, or employee benefits.

Civil rights groups believe that these and other changes in the enforcement of Executive Order 11246 have had a significant impact on the ability of minorities and women to achieve equal employment opportunities among large government contractors. Without strong enforcement of federal civil rights requirements governing affirmative action laws, they believe that minorities and women will continue to suffer from ongoing employment discrimination which is financed by the federal government.

## VI. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

The Equal Employment Opportunity Commission (EEOC) is responsible for enforcing Title VII of the Civil Rights Act of 1964, which prohibits discrimination among most private and public employers, including the federal government. The agency also enforces the Equal Pay Act, the Age Discrimination Act, and Section

501 of the Rehabilitation Act. In addition, EEOC coordinates all federal equal employment policies and procedures.

Since the 1970s, EEOC has been plagued with a large backlog of complaints which prohibited it from resolving individual complaints in a timely manner. New procedures were implemented in 1977 to eliminate the backlog; however, EEOC has failed to meet its target date of September 1982 for the complete elimination of the backlog. In the midst of this turmoil, the needs of Hispanics have rarely been addressed by EEOC, despite the widespread employment discrimination which Hispanics face and which has been documented in numerous studies.

A. Complaint Processing

EEOC, faced as it is with an enormous backlog of complaints, has focused the bulk of its staff and monetary resources on resolving individual complaints. During the past three years it has succeeded in significantly reducing the number of backlogged complaints; however, new complaints have been filed in increasing numbers. As a result, in FY 1982, 42 percent of EEOC's complaint processing workload was comprised of complaints over 300 days old, and the average processing time was 186 days. In order to control this complaint overload, the Commission has been training its staff as generalists, rather than specialists, and specialized units which in the past dealt with one type of complaint are being consolidated into large components. This type of generalization may result in increased administrative convenience and efficiency, but it may also detract from the quality of the investigations, as staff with little expertise in a particular area attempt to resolve such complaints. The Senate Special Committee on the Aging specifically criticized this system, concluding that EEOC had not gained sufficient expertise in enforcing the Age Discrimination Act to warrant merger of all processing units.

B. Hispanic Study

Among the more positive efforts undertaken during the past three years to address the civil rights needs of Hispanics was an internal study conducted by two Hispanic EEOC Commissioners, Tony Gallegos and Armando Rodriguez. Their study concluded that EEOC had failed to meet the needs of Hispanics or to be sensitive to the special concerns of the Hispanic community under any Administration, and that dramatic changes needed to occur within the agency to address these problems. The investigation, which included statistical analysis as well as a series of field hearings throughout the country, found the following:

- While the total number of complaints filed with EEOC between 1977 and 1982 rose by 76.5%, the number of Hispanic complaints dropped from 9.1% of the total in 1977 to 4.9% of the total in 1982.
- Settlements for Hispanic cases totaled only about 1.9% of total funds recovered through EEOC administrative settlements in 1982.
- In 1980, 44% of the Hispanic complaints were closed for "failure to cooperate" with EEOC's investigative process; only 6% of Black complaints were closed for this reason.
- Of the 6,327 national origin complaints filed with EEOC in 1980, 84% were administratively closed without any remedy to the charging party. In 1982, 79.5% of Hispanic complaints met a similar fate.

As a result of the Hispanic investigation, several steps have been taken by EEOC to improve services to Hispanics, including increased outreach, informational programs for small business owners, and additional staff resources to investigate complaints in area offices with a high volume of cases. The success and duration of these types of services can not yet be determined, but Hispanic organizations consider it essential that these and other measures be taken to improve EEOC's record in addressing the prevalent and special needs of Hispanics who face discrimination in employment.

## VII. U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights was established by Congress in 1957 as an independent bipartisan agency, charged with investigating and appraising federal laws and policies related to discrimination and equal opportunity. Since the Commission's inception, Congress has emphasized its intent that the Commission be free from political influence. This independence has been respected by every Administration and, prior to President Reagan, no President has ever fired a member of the Commission, nor had any asserted that he has the right to do so.

### A. Firing of Commissioners

The Reagan Administration, however, disapproved of the reports and statements made by the Commission concerning the Administration's civil rights policies. In an unprecedented action, President Reagan dismissed the Commission's Chair and Vice Chair in 1982 and appointed two new persons to these positions. The President then announced in May 1983 his plans to replace three additional members of the Commission, thus removing five of the six Commissioners in office when he became President. When the Senate failed to approve President Reagan's nominees through the normal confirmation process, the President fired the three members of the Commission. These firings were later ruled illegal by a District Court Judge, who ordered the reinstatement of the fired Commissioners.

### B. Reauthorization of the Commission

The legislation reauthorizing the Commission on Civil Rights was to expire in September 1983 if Congress failed to pass legislation reauthorizing the agency. Thus, in conjunction with the proposed firing of members of the Commission, Congress was also struggling to pass reauthorizing legislation. Leading members of the Senate Judiciary Committee were locked in a impasse for several months, as supporters of President Reagan's policies insisted on the confirmation of

Reagan's nominees to the Commission before they would consider the reauthorization legislation, and opponents of the Administration's policies refused to consider appointing new persons to positions on the Commission which were already filled, while seeking swift passage of a reauthorization bill.

The Senate Committee attempted for nearly six months to negotiate with the Administration, primarily through White House Counsel Edwin Meese, to find some means of continuing the Commission and protecting its independence, while still permitting some of the President's new nominees to take office. Compromise language called for the expansion of the Commission to accommodate two of the three Reagan nominees, along with clear assurances that no future member of the Commission would ever be fired without just cause. The White House refused to support this compromise; and as the Senate attempted to persuade the Administration, the Commission's authorization expired.

Finally, the Senate Committee decided to move on the measure, even without White House approval. On the same day that the Committee was set to vote on the measure, President Reagan fired the three members of the Commission, thus nullifying the Committee's plans to ensure that these three members would continue to serve on the expanded Commission.

Members of Congress were outraged and moved quickly to introduce legislation to form a Congressional Commission, outside the Executive Branch, which would be totally controlled by the Congress and established through a Congressional Resolution not subject to Presidential veto. Working under a short time limit, since Congress was scheduled to adjourn within two weeks, sponsors of the bill gained widespread support for a Congressional Commission.

Many leading Republican Senators, however, were committed to the reauthorization of the existing Commission, rather than the establishment of a new Congressional Commission. When it became apparent that the Congressional Commission

measure might pass in the House, these Senators proposed a number of alternatives which would permit the President to appoint some Commissioners and Congress to appoint others. Given the time constraints facing a Congress which was only days from adjourment, leading members of both Houses attempted to negotiate a compromise which would meet the goals of all concerned. Finally, an agreement was reached whereby the eight-member Commission would be jointly appointed by the President and Congress. with oral commitments from the White House and Republican Senate leaders that all members of the previous Commission would be reappointed if they so desired.

Based on the oral commitments made by key Republican Senators to other members of Congress and civil rights groups, the compromise was introduced and passed by unanimous consent in the House and by a vote of 78 to 3 in the Senate. It was signed into law by President Reagan on November 30, 1983. However, the White House denied the existence of the oral agreement and denied that any promises had been made regarding the reappointment of previous Commissioners. The President did not reappoint Mary Louise Smith, former Chairperson of the Republican National Committee, since she would not commit herself to supporting the President on major issues. Moreover, Congressman Robert Michel (R-IL) refused to reappoint Jill Ruckleshaus, also a Republican, and instead appointed President Reagan's third original nominee, with the President appointing the other two, plus two additional members. Thus, the President got five, rather than four, individuals of his choice appointed to the Commission.

Democratic members of Congress and members of the civil rights community were outraged by the Administration's actions, since they considered the reappointment of members a crucial element of the negotiated agreement. However, Republican members of the Senate who had been involved in the negotiations refused to acknowledge that an agreement had been made. President Reagan succeeded in gain-

ing control of the U.S. Commission on Civil Rights and civil rights groups conclude from its subsequent actions that he has politicized an institution which had previously been largely independent of partisan political influence.

C. New Commission Initiatives

The new Commission on Civil Rights, composed of a majority of members chosen or appointed by President Reagan, has initiated a number of major policy changes during its tenure. Since its first meeting on January 16-17, 1984, the new Commission has created a great deal of controversy and animosity among supporters of federal civil rights laws in both parties. The body has reversed several long-standing Commission positions. without the benefit of new studies or research, replacing them with their and the Reagan Administration's positions. One the first resolutions adopted by the new Commission, by a vote of 6-2, states that the Commission will not be bound by the findings or positions of the previous Commission. Thus, years of research and analysis on civil rights issues has been rejected, in favor of the philosophies of the new members.

For the most part, the changes in Commission policy are being orchestrated by the Reagan-appointed Staff Director, Linda Chavez Gersten, who has developed plans for major shifts in Commission stances and priorities. Key among the new policy positions is the concept that social programs which seek to alleviate past discrimination and unequal treatment do not come under the jurisdiction of civil rights concerns, and therefore will not be studied by the Commission in the future. Thus, federal financial aid to minority students and entitlement programs for members of protected classes will now be excluded from Commission consideration.

The new Commission has also rejected the use of quotas in affirmative action programs, citing them as "another form of unjustified discrimination ... which offend[s] the Constitutional principle of equal protection of the law for all citizens." Dissenting from the majority view, Commissioner Mary Berry asked the

Commission to "engage in at least as much fact-finding, hearings, consultations, and other data-gathering as previously pursued by the Commission before reaching a conclusion on this important subject."

Long-time observers believe that the new Commission is unlikely to provide a voice for the legal rights of minorities, women, the handicapped, the elderly and other protected classes. Representatives of the civil rights community will continue to question the validity of any future policies or recommendations made by this body, and have concluded that they must look to other sources for information and oversight concerning the current status of civil rights in this nation.

## VIII. CONCLUSIONS

The Reagan Administration's actions on key civil rights and affirmative action issues, as described above, lead to the conclusion that these actions reflect a distinct regression in policies, supporting the reversal, dilution or non-implementation of many long-established laws, rulings, regulations and procedures. These changes are varied in both scope and impact, yet they have a clear philosophical base, revolving around common themes such as a commitment to less "intrusion" by the federal government into what they consider to be the private lives of Americans -- even if such non-intervention makes it impossible to secure equal rights and opportunities for all Americans. Many of these changes are long-range legislative or structural alterations which will have a lasting effect on civil rights policies. Others may be less permanent, since they involve changes in staffing, and resulting differences in methods of administration. Personnel changes are important, because persons in key decision-making positions can make significant policy changes; however, if the foundation of civil rights laws is preserved, then policy and procedural changes can be reversed by new personnel in the future.

The National Council of La Raza, as an Hispanic organization, is particularly concerned with the major civil rights changes instituted under the Reagan Administration. While no minority group has attained equality of opportunity, Hispanics face special challenges as they continue to suffer from pervasive discrimination in areas such as housing, education, private and public employment, access to services, voting, immigration, legal representation, and business ownership. The current Administration's actions are multiplied in their impact upon Hispanics, since Hispanics did not benefit fully from the legal mandates for equality which were enacted in the past. While all minorities are appropriately concerned about the loss of past gains, Hispanics also fear the closing of doors of opportunity which even in the past were only slightly ajar.